



City of Long Beach Memorandum

Working Together to Serve

Date: July 23, 2019

To: Patrick H. West, City Manager *T.H.W.*

From: *GM* Gerardo Mouet, Director of Parks, Recreation and Marine

For: Mayor and Members of the City Council

Subject: **Long Beach Animal Care Services**

At its May 7, 2019 meeting, the City Council requested the City Manager to work with the Parks, Recreation, and Marine Department to implement the Compassion Saves model as the operational approach for Long Beach Animal Care Services (LBACS) and ensure that this direction is reflected in the LBACS Strategic Plan; provide a report on the existing relationship and recommendations for improvements in policies and practices between Los Angeles Society for the Prevention of Cruelty to Animals (spcaLA) and LBACS; maintain facilities and financial conditions which are most conducive to promoting increased adoptions at the LBACS facility; and approve recommendations to implement Compassion Saves approach, have staff work with the task force to assist developing the policy in items listed. The City Council requested that staff provide a report within 60 days.

Staycee Dains, Manager of Animal Care Services, and her staff have been making progress on the research and policies requested by the City Council. LBACS has had to place priority, as it does every summer, on responding to the higher admissions of dogs and cats that come into the facility at this time. With the Department's new Compassion Saves approach, LBACS staff has been very busy preventing our facility from being overcrowded and have been focusing on saving animals. In addition, Staycee, her staff, and the LBACS Task Force have been meeting regularly and are making progress on developing the Strategic Plan. For these reasons, staff requires additional time to prepare the report requested by the City Council. The report is anticipated to be complete in October.

Pursuant to the complaint that spcaLA did not possess the appropriate business licenses, a business license inspector visited the spcaLA location, 7700 E. Spring Street, on May 8, 2019 (the day after the City Council meeting). The inspector found there was a retail operation occurring at the location as stated in the complaint, and informed spcaLA they needed to apply for a retail business license as soon as possible. spcaLA complied and submitted their application for retail sales on May 29, 2019. A license was issued after the Development Services Department approved the use and the Fire Department conducted its inspection. spcaLA had previously obtained licenses for its other operations

The licenses currently held by spcaLA at the location are:

- Veterinary Clinic with Boarding
- Social Services without Food Distribution (pet adoption, dog training, pet grooming and pet hotel)
- Retail Sales

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As requested, a copy of spcaLA's lease has been attached. The lease is in effect until July 31, 2053. Several related documents have also been attached for your reference.

Please let me know if you require additional information. I can be reached at (562) 570-3172.

GM:gh

ATTACHMENTS

LEASE - 25915

AGREEMENT - 25914

LEASE-BACK – 25916

FIRST AMENDMENT TO LEASE-BACK - 25916

CC: CHARLES PARKIN, CITY ATTORNEY
LAURA L. DOUD, CITY AUDITOR
DOUGLAS HAUBERT, CITY PROSECUTOR
TOM MODICA, ASSISTANT CITY MANAGER
KEVIN J. JACKSON, DEPUTY CITY MANAGER
REBECCA GARNER, ASSISTANT TO THE CITY MANAGER
MONIQUE DE LA GARZA, CITY CLERK (REF. FILE #9-0451)

LEASE
25915

THIS LEASE is made and entered, in duplicate, as of the 1st day of August, 1998 for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting held on April 7, 1998, by and between the CITY OF LONG BEACH, a municipal corporation ("City"), and the LOS ANGELES SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, a California non-profit corporation, whose address is 5026 West Jefferson Boulevard, Los Angeles, California 90016 ("SPCALA").

RECITALS

WHEREAS, the City is the owner of certain real property in the City of Long Beach, County of Los Angeles, State of California, which City desires to lease to SPCALA on the terms, covenants, and conditions stated in this Lease; and

WHEREAS, SPCALA shall construct improvements on the real property described in this Lease and, after such construction, shall lease-back a portion of the Property to the City of Long Beach pursuant to a written Lease-Back to be entered into concurrently with the Lease; and

WHEREAS, the parties intend and agree that this Lease and the Lease-Back shall be mutually interdependent;

NOW, THEREFORE, in consideration of the faithful performance of the terms, covenants and conditions stated herein and at the time and in the manner stated herein, the parties agree as follows:

1. Recitals. The above recitals are incorporated herein by this reference. Capitalized terms used but not defined herein shall have the meanings set forth in the Lease-Back.

2. Property.

A. City hereby leases to SPCALA and SPCALA hereby accepts "as is" and leases from City the property shown on Exhibit "A," attached hereto and incorporated herein by this reference, commonly known as 7700 East Spring Street, Long Beach, Los Angeles County, California 90805 (the "Property"), and consisting of approximately 6.5 acres. SPCALA acknowledges that it has not received and City has not made any warranty, express or implied, as to the condition of the Property. The SPCALA shall be responsible for the construction of a shelter as is more fully described in this Lease and in the Lease-Back (the "Facility").

B. SPCALA shall use master locks in construction of, and shall provide to City master keys for all exterior doors, gates and other locked enclosures which are part of or lead to the Common Areas.

3. Term.

The term of this Lease shall begin at 12:01 a.m. on August 1, 1998, and shall end at midnight on July 31, 2053, unless sooner terminated as provided herein. September

1st shall be the anniversary date of this Lease. If the California Government Code is amended, after the execution of this Lease, to allow a term greater than fifty-five (55) years, the SPCALA shall have the option to extend to the maximum time allowed by such amendment by giving notice to City of SPCALA's desire to extend.

4. Rent.

A. SPCALA shall pay to City, as annual rent, the sum of One Hundred Twenty Dollars (\$120.00), payable in advance, without deduction, set-off, notice, or demand, on the anniversary date of each Lease year, and other good and valuable consideration, including SPCALA's execution of the Lease-Back, educational programs offered to the community, and other community service inherent in SPCALA's business.

B. Additional Rent. SPCALA shall pay as additional rent any sum expended by City under Section 9(B), and Section 25.

C. Place of Payment. SPCALA shall pay rent at City's address for notice in Section 28.

5. Use.

A. The Property shall be used solely for one or more of the following purposes and no other:

- (i) constructing the Facility;
- (ii) providing for the adoption, care, treatment and disposition of animals; education relating to the care of such animals; administrative offices and facilities; the operation of day and

overnight kennels; and all such other activities and projects consistent with the operation of a society for the prevention of cruelty to animals.

- (iii) leasing back a portion of the Facility to the City for use solely by its Department of Health and Human Services in connection with its animal control program.

B. SPCALA shall not use the Property or conduct its business thereon, in any manner that will create a nuisance or constitute waste. SPCALA shall not make or permit any noise or odors that constitute a nuisance within the meaning of California Civil Code Section 3479 or California Penal Code Section 370.

C. SPCALA shall use the Property and operate its business thereon in compliance with all laws, ordinances, rules, orders of, regulations and requirements of any fire insurance underwriters or ratings bureaus and obtain such permits, licenses, and certificates required by all federal, state, and local governmental authorities having jurisdiction over the Property and SPCALA's business thereon, whether now in effect or which may hereafter come into effect.

D. SPCALA understands and agrees that this Lease covers only the surface of the Property and only so much of the sub-surface as is reasonably necessary or convenient for SPCALA's use of the Property as permitted herein.

E. City is not currently under notice that the Property, in the state existing on the date that the Lease term commences but without regard to improvements made by SPCALA or SPCALA's use, violates any covenants or restrictions of record.

6. SPCALA's Improvements.

A. As additional consideration in lieu of rent payments for this Lease, SPCALA shall construct improvements to the Property as more particularly described in Exhibit "B," attached hereto and incorporated herein by this reference (the "Work"). SPCALA shall do the Work in accordance with plans approved by City's Department of Planning and Building acting in its municipal capacity and not in its capacity as a lessor of property and approved by City's Department of Health and Human Services (the "Department"), which approval from the Department shall not be unreasonably withheld or delayed.

B. SPCALA shall use its best efforts to begin the Work within ninety (90) days after receipt of all necessary permits, licenses, and approvals and shall proceed diligently to complete the Work.

C. All change orders desired by SPCALA above \$50,000.00 shall be approved by the Director of the Department or designee which approval shall not be unreasonably withheld or delayed

D. Prior to beginning the Work, SPCALA shall file with City a Performance Bond in the amount of one hundred percent (100%) of the estimated cost of the Work and a Labor and Material Bond (also known as a Payment Bond) in the amount of one

hundred percent (100%) of the estimated cost of the Work, both executed by SPCALA or SPCALA's contractor, as Principal, and by a surety authorized to do business in California as a Surety. Said bonds shall name City as a joint obligee with SPCALA. Nothing contained herein shall be deemed to release SPCALA from the duty to keep the Property free of liens. The Performance Bond shall remain in effect until the expiration of the statutory period for filing liens or stop notices, or until the Property is free from the effect of such liens or stop notices, if same have been filed.

E. All contracts entered into by SPCALA relating to the Property or the Work or the use of the Property shall contain the following statement:

"This agreement/contract shall in no way bind the City of Long Beach, its officials or employees, nor obligate them for any costs or expenses whatsoever under this agreement/contract, or which are in any manner connected with the subject matter of this agreement/contract."

F. SPCALA shall notify City at least twenty (20) days prior to beginning the Work to enable City to post and record a Notice of Non-responsibility.

G. City shall not be obligated to make any capital improvements or alterations in or about the Property.

H. On the expiration or sooner termination of this Lease, the Facility and all other improvements to the Property shall become the property of City at no cost to City.

I. Other than the Work, SPCALA shall not make any other improvements to the Property without the prior written approval of City. City may withhold approval if the proposed improvements will materially increase Operating Expenses or if they will adversely affect the Lease-Back in City's sole opinion. If City approves the construction of other improvements, then SPCALA shall construct the improvements in accordance with plans approved by City's Department of Planning and Building acting in its municipal capacity and not in its capacity as a lessor of property and approved by City's Department which approval from the Department may not be unreasonably withheld or delayed. In the event of any subsequent improvements contemplated under this paragraph, SPCALA shall comply with all applicable codes, ordinances, regulations, and requirements for permits, licenses, and approvals. In addition, the provisions of Section 6(B), (C), (D), (E), (F), and (H) and Section 7 shall apply to the construction. Following construction the definition of Facility shall include the Work and all newly built improvements.

J. City's approval for the construction of new improvements, once given, shall not be construed to be approval of any subsequent or other request for approval of construction of improvements.

7. Liens.

A. SPCALA shall keep the Property free of any mechanic's or materialman's liens for any work done, labor performed, or material furnished by or for SPCALA relating to the Property. SPCALA shall defend, indemnify and hold City, its officials and employees harmless from and against all damages, claims, demands, causes of

action, liens, liability, loss, costs, and expenses including reasonable attorney's fees) of whatsoever kind for any such work done, labor performed, or materials furnished on the Property except to the extent the conduct of the City contributed to said damages. It is the intent of the parties hereto that each party shall be responsible for all such costs, losses and liabilities based upon their comparative fault.

B. In addition to Subsection 7(A), if a mechanic's or materialman's lien is imposed on the Property as a result of construction or repair, then SPCALA shall:

- (i) record a valid release of lien; or
- (ii) deposit with City cash in an amount equal to 125% of the amount of the lien and authorize payment to the extent of said deposit to any subsequent judgment holder that may arise as a matter of public record from litigation with regard to lienholder's claim; or
- (iii) procure and record a lien release bond in accordance with California Civil Code Section 3143 issued by a surety authorized to do business in California.

C. On completion of the Work, SPCALA shall file a Notice of Completion in the Official Records of the County Recorder of Los Angeles County.

8. Taxes.

A. SPCALA acknowledges that this Lease may create a possessory interest subject to taxation and that SPCALA may be subject to payment of taxes levied on such

interest. SPCALA shall pay before they become delinquent all taxes levied against the Property and provide proof of payment to City within ten (10) days after City's request therefor.

B. SPCALA shall pay before they become delinquent all taxes, assessments, license fees, and other charges levied on SPCALA's personal property, equipment, furnishings or trade fixtures installed or located on the Property and provide proof of payment to City within ten (10) days after City's request therefor.

9. Insurance.

A. As a condition precedent to the effectiveness of this Lease, SPCALA shall procure and maintain, at SPCALA's cost, from an insurer admitted in California or having a rating of A:VIII or better by A.M. Best & Company the following insurance:

(i) Comprehensive General Liability insurance including business interruption and products coverage with a combined single limit of at least Three Million Dollars (\$3,000,000.00) for each occurrence or Five Million Dollars (\$5,000,000.00) general aggregate. City, its officials, employees and agents shall be covered as additional insureds with respect to liability arising from activities performed by or on behalf of SPCALA on the Property. Said insurance shall be primary insurance with respect to City and shall contain a cross liability endorsement.

(ii) "All Risk" property insurance in an amount sufficient to cover the full replacement cost of SPCALA's personal property, improvements and equipment on

the Property. City shall be named as an additional insured under a standard loss payable endorsement.

(iii) Upon the execution of this Lease, SPCALA shall deliver to City certificates of insurance with original endorsements evidencing the coverage required by this Lease. The certificates and endorsements shall be signed by a person authorized by the insurer to bind coverage on its behalf. City reserves the right to require complete certified copies of all policies at any time.

(iv) Said insurance shall contain an endorsement requiring thirty (30) days' prior written notice from insurers to City before cancellation or change of coverage.

(v) Said insurance may provide for such deductibles or self-insured retention as may be acceptable to City's Risk Manager. In the event such insurance does provide for deductibles or self-insured retention, SPCALA shall fully protect City, its officials, and employees in the same manner as these interests would have been protected had the policy or policies not contained deductibles on retention provisions. With respect to damage to property, City and

(vi) SPCALA hereby waive all rights of subrogation against each other but only to the extent that collectible commercial insurance is available for said damage.

(vii) Not more frequently than every three (3) years, if in the opinion of City or of an insurance broker retained by City, the amount of the foregoing insurance

coverage is not adequate, SPCALA shall increase the insurance coverage as reasonably requested by City.

(viii) The procuring of said insurance shall not be construed as a limitation on SPCALA's liability or as full performance on SPCALA's part of the indemnification and hold harmless provisions of this Lease; and SPCALA understands and agrees that, notwithstanding any insurance, SPCALA's obligation to defend, indemnify and hold City, its officials and employees harmless hereunder is for the full amount of any damage, cause of action, loss, expense, cost, or liability caused by the condition of the Property or in any manner connected with or attributed to the acts or omissions of SPCALA, SPCALA'S, agents, employees, licensees, invitees, or visitors, or the operations conducted by SPCALA, or SPCALA's use, misuse or neglect of the Property.

(ix) Any modification or waiver of the insurance requirements herein shall only be made with the written approval of the City's Risk Manager or designee.

(x) City makes no representation or warranty that the limits or forms of coverage of insurance specified herein are adequate to cover SPCALA's property, liability, or obligations under this Lease.

B. In the event of a loss to the Property or Facility, and such loss is covered by City's property insurance, SPCALA shall pay to City one-half (½) of the deductible, which payment shall not exceed \$25,000.00, regardless of who or what caused the loss or where on the Property the cause originated.

10. Utilities.

A. SPCALA shall arrange and pay for the installation and use of utilities, including but not limited to gas, electricity, and trash disposal, on or to the Property, and City shall arrange and pay for the use of water and sewer services to the Facility. City and SPCALA shall each pay for their own costs for telephone installation and use.

B. There shall be no abatement or refund of rent and City shall not be liable in any respect for the inadequacy, stoppage, interruption, or discontinuance of any utility service provided by it in its municipal capacity.

11. Maintenance.

A. Except as provided in the Lease-Back or elsewhere in this Lease, SPCALA shall, at its cost and to the satisfaction of City, maintain the Property (including the Common Areas) in good condition, in substantial repair, in a safe, clean, sanitary condition, and in compliance with applicable laws. SPCALA shall use its best efforts to notify City of the appearance of graffiti within twenty-four (24) hours after it appears. SPCALA's duty to maintain shall include but not be limited to the duty to repair and replace the improvements as needed provided that SPCALA's cost to replace shall not exceed the amount of SPCALA's insurance, as required hereunder. If SPCALA fails to maintain the Property, City may notify SPCALA of said failure. If SPCALA fails to correct the situation within thirty (30) days thereafter or such longer period as may be established by City, then City may make the necessary correction and the cost thereof, including but not limited to the cost of labor, materials, equipment and administration, shall be paid by SPCALA as additional rent within

ten (10) days after receipt of a statement of said cost from City. City may, at its option, choose other remedies available herein or by law. SPCALA hereby waives to the extent permitted by law any right to make repairs at the expense of City or to vacate the Property in lieu thereof as may be provided by law.

B. City shall have no obligations with respect to maintenance of the Property, except as stated in the Lease-Back.

12. Restoration. SPCALA shall promptly notify City of damage or destruction to the Facility and the date of same. SPCALA shall promptly make proof of loss and proceed to collect all valid claims that SPCALA may have against insurers or others based on such damage or destruction. All amounts recovered as a result of said claim shall be used first for the restoration of the Facility, which SPCALA shall promptly begin and diligently pursue so that the Facility is restored to substantially the same condition as it was in immediately before such damage or destruction. If existing laws do not permit restoration, then SPCALA may terminate this Lease by giving prior notice to City. Restoration shall proceed in accordance with the provisions of Section 6 of this Lease.

A. There shall not be an abatement or refund of rent during any period of restoration.

B. If the repair, reconstruction or restoration requires longer than one hundred twenty (120) days or if the insurance proceeds will not be sufficient to cover the cost of repair, reconstruction or restoration, then City may elect to repair, reconstruct or restore and the Lease shall continue in full force and effect or City may elect not to repair,

reconstruct or restore and the Lease shall terminate. If City elects to repair, reconstruct or restore, then City shall not be required to expend sums therefor in excess of insurance proceeds received by City by reason of the casualty. If City repairs, reconstructs or restores, then SPCALA's rent under this Lease shall be abated proportionately as of the date of the casualty with the degree to which SPCALA's use of the Facility is impaired during such repair, reconstruction or restoration. SPCALA shall not be entitled to any compensation or damages for loss in the use of the whole or any part of the Facility and any inconvenience or annoyance occasioned by such damage, repair, reconstruction or restoration.

C. In the event the Facility cannot be repaired or restored, then City and SPCALA shall divide all insurance proceeds received on a pro rata basis in accordance with their respective percentage of occupancy of the Facility.

13. Condemnation.

A. If the whole of the Property, Facility or improvements is taken by right of eminent domain or otherwise for any public or quasi public use, then when possession is taken thereunder by the condemnor or when SPCALA is deprived of practical use of the Property, Facility or improvements, whichever date is earlier, this Lease shall terminate. If there is a partial taking so that the remaining portion of the Property or improvements thereon cannot be restored to an economically feasible operation of a comparable kind to that which existed prior to the taking, then this Lease shall, at SPCALA's option, terminate as of the time when possession was taken by the condemnor or when SPCALA was deprived of practical use of the Property, whichever date is earlier.

B. If there is a taking by right of eminent domain, the rights and obligations of the parties with reference to the award and the distribution thereof shall be determined in accordance with this Section. The award shall belong to and be paid twenty percent (20%) to City and eighty percent (80%) to SPCALA.

14.. Nondiscrimination. Subject to applicable federal and state laws, rules, and regulations, SPCALA shall not discriminate against anyone on the basis of age, sex, sexual orientation, AIDS, AIDS related condition, marital status, race, religion, creed, ancestry, national origin, disability, handicap, or Vietnam Era veteran status in the use of the Property.

15. Assignment. SPCALA shall not assign or transfer this Lease or any interest herein nor sublease the Property or Facility or any part thereof to anyone other than the Lease-Back tenant. Further, neither this Lease nor any interest herein shall be subject to transfer by attachment, execution, proceedings in insolvency or bankruptcy, or receivership unless said receivership is sought by City. Assignment of the Lease-Back either by SPCALA or by a trustee in bankruptcy shall be a material non-curable breach of this Lease, entitling the non-breaching party to terminate this Lease immediately without the necessity of notice. In the event of assignment or transfer, voluntarily or involuntarily or by operation of law, without the prior approval of City, such transfer shall be voidable at City's election and, if avoided by City, shall convey no interest and shall constitute a default of this Lease. However, this provision shall not apply in the event the SPCALA is acquired by or merges with an entity whose purposes are similar to the SPCALA.

16. Indemnification. SPCALA shall defend, indemnify and hold harmless City, its officials and employees from all claims, demands, damage, causes of action, losses, liability, costs, and expenses (including reasonable attorney's fees) of any kind or nature whatsoever which City, its officials or employees may incur for injury to or death of persons or damage to or loss of property occurring in, on, or about the Property, arising from the condition of the Property, the alleged acts or omissions of SPCALA, its officers, employees or agents, the occupancy, use, or misuse of the Property by SPCALA, its officers, employees, agents, licensees, patrons, or visitors, or any breach of this Lease.

Except as otherwise provided in the Lease-Back and notwithstanding anything to the contrary herein contained, SPCALA shall have no obligation to defend, indemnify or hold harmless City, its officials or employees for any claims, demands, damage, causes of action, losses, liability, costs, and expenses (including reasonable attorney's fees) of any kind or nature whatsoever arising from any act or failure to act by the City, the City's occupancy of any portion of the Property or with respect to requirements or obligations uniquely applicable to City or cities in general which SPCALA has not otherwise expressly agreed to perform.

17. Default.

A. The occurrence of any of the following acts shall constitute a default by SPCALA:

(i) Failure to pay rent when due if the failure continues after three (3) days' written notice to SPCALA;

(ii) Abandonment of the Property, providing that failure to occupy

or operate the Facility for thirty (30) consecutive business days shall be deemed an abandonment except for causes of force majeure as described in Section 30;

(iii) Any attempted assignment, transfer, or sublease in violation of Section 15;

(iv) Failure to maintain or pay for all necessary permits and business licenses required by the City of Long Beach in its municipal or regulatory capacity;

(v) Failure to pay when due all fees and charges for refuse service, gas, or other utility or service provided by the City of Long Beach in its municipal capacity;

(vi) Failure to report or pay when due to the City of Long Beach in its municipal or regulatory capacity all applicable sales tax, transient occupancy taxes, utility use taxes, or other excise taxes, if applicable;

(vii) The making by SPCALA of any general arrangement or general assignment for the benefit of creditors, or the appointment of a trustee or receiver to take possession of substantially all of SPCALA's assets located at the Property or of SPCALA's interest in this Lease, or the attachment, execution or other judicial seizure of substantially all of SPCALA's assets located at the Property or of SPCALA's interest in this Lease, or where SPCALA becomes a "debtor" as defined in any bankruptcy laws. If any provision of this subpart is contrary to law, such provision shall have no force or effect;

(viii) Failure to perform any term, covenant or condition of this Lease, other than those set forth in sub-sections (i), (ii) and (iii) of this section, shall not constitute a default unless such default is not cured within thirty (30) days after receipt by SPCALA of

written notice from the City specifying such default. If the default cannot be reasonably cured within such thirty-day (30) period, SPCALA shall still not be in default if SPCALA begins to cure within such thirty-day (30) period and diligently prosecutes such cure to completion;

(ix) The failure by SPCALA to perform any of the covenants, conditions or provisions of Section 15 ("Assignment") Section 17(A) (ii) (abandonment), and Section 17(A) (vii) (insolvency), all of which are hereby deemed to be material, non-curable defaults without the necessity of any notice by City to SPCALA thereof;

(x) The parties mutually agree that and this Lease is and shall be mutually dependent on the Lease-Back, and a default by SPCALA under the Lease-Back shall be a material non-curable default under this Lease and termination of the Lease-Back by SPCALA or rejection of the Lease-Back by SPCALA (or by a trustee in bankruptcy) in a bankruptcy proceeding shall also be a material non-curable default under this Lease, all of which shall entitle City to terminate this Lease immediately without the necessity of notice thereof by City to SPCALA.

B. City shall not be in default unless City fails to perform obligations required of City under this Lease within a reasonable time, but in no event later than thirty (30) days after notice by SPCALA to City specifying City's failure to perform such obligation provided, however, that if the nature of City's obligation is such that more than thirty (30) days are required for performance, then City shall not be in default if City begins performance within such 30-day period and thereafter diligently pursues same to completion.

18. **Remedies.** The parties' remedies hereunder are not exclusive but cumulative to other remedies provided by law or in equity in the event of default.

19. **Re-entry.** SPCALA shall peaceably deliver possession of the Property to City on the date of termination of this Lease, and whatever the reason for termination. On giving notice of termination to SPCALA, City shall have the right to re-enter and take possession of the Property on the date termination becomes effective without further notice of any kind and without instituting summary or regular legal proceedings. Termination of this Lease and re-entry by City shall in no way alter or diminish any obligation of SPCALA under this Lease and shall not constitute an acceptance or surrender. SPCALA hereby waives any right of redemption under any existing or future law in the event of eviction from or dispossession of the Property for any reason or in the event City re-enters and takes possession of the Property in a lawful manner.

20. **Waiver by City.** Any waiver by City of any default or breach of any one or more of the terms, covenants, or conditions of this Lease shall be in writing and shall not be construed to be a waiver of any subsequent or other breach or default of the same or of any other term, covenant, or condition of this Lease, nor shall failure on the part of City to require exact and complete compliance with any of the terms, covenants, or conditions of this Lease be construed as in any manner changing the terms, covenants, or conditions hereof or prevent City from enforcing the provisions hereof, nor shall the conduct of the parties be deemed to change or modify the terms, covenants, or conditions of this Lease. No delay, failure, or omission of City to re-enter the Property, to insist on strict enforcement of any term,

covenant, or condition, or to exercise any right, power, privilege or option arising from any breach or default shall impair any such right, power, privilege or option or be construed as a waiver of or acquiescence in such breach of default or as a relinquishment of any right, power, privilege or option. The acceptance of delinquent rent by City shall not constitute a waiver of any other breach or default but shall only constitute a waiver of timely payment for the particular rent payment involved. No notice to SPCALA shall be required to restore "time is of the essence" after the waiver by City of any breach or default. No right, power, privilege, option or remedy of City shall be construed as being exhausted by the exercise thereof in one or more instances.

21. Waiver by SPCALA. Except to the extent of available insurance coverage, City shall not be liable to SPCALA for and SPCALA hereby waives all claims against City, its officials and employees for loss, theft, or any damage to SPCALA or SPCALA's personal property on the Property, for loss or damage to SPCALA's business, or injury to or death of persons on or about the Property from any cause, except City's gross negligence or willful misconduct. SPCALA acknowledges that it is familiar with California Civil Code Section 1542 which reads:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

And, SPCALA hereby releases City from any unknown claims and waives their rights under Section 1542. This waiver is personal to SPCALA as an entity and nothing herein contained shall be deemed a waiver of the rights of others with respect to which SPCALA has no right to waive or otherwise compromise their rights.

22. Abandoned Personal Property. If SPCALA abandons the Property or is dispossessed thereof by process or law or otherwise, SPCALA shall be deemed to have abandoned any personal property belonging to SPCALA left on the Property forty-five (45) days after the date of abandonment or dispossession, and title to said personal property shall be deemed to have been transferred to City. City shall have the right to remove and to dispose of said personal property without liability therefor to SPCALA or to any person claiming under SPCALA, and shall not need to account for its disposal. SPCALA hereby designates City's City Manager as its attorney-in-fact to execute and deliver any documents that are required to dispose of said personal property and transfer title thereto.

23. Quiet Possession. If SPCALA pays the rent and performs all of the covenants and conditions of this Lease, SPCALA shall have quiet possession of the Property for the term hereof subject to the covenants and conditions of this Lease.

24. Right of Access. City shall have the right of access to the Property at all reasonable times and, in emergencies, at any time and, if SPCALA is not present to give access during emergencies, then City may forcibly enter the Property and any such entry shall not in any circumstances be construed or deemed a forcible or unlawful entry of the Property. SPCALA shall not be entitled to compensation or abatement of rent for any

nuisance or inconvenience caused by City's entry in an emergency.

25. Signs. City and SPCALA hereby mutually agree to place, affix, maintain, or permit any sign, advertisement, name, insignia, logo, descriptive material, or similar item (collectively "sign" or "signs") on the Property. Signs identifying SPCALA shall be maintained by SPCALA, at its cost, in good condition. Any sign not mutually agreed to may be removed by City at SPCALA's cost and the cost of removal shall be additional rent.

City and SPCALA shall erect appropriate signs to identify the SPCALA's portion of the Property as separate from the portion of the Property that is leased back to the City. These signs may take the form of a map or other graphics of the Property color-coded to identify the separate portions as well as descriptive signs with arrows, logos, or other identifying marks.

26. Americans with Disabilities. Except as otherwise provided in the Lease-Back, SPCALA shall have and be allocated the sole responsibility to comply with the Americans with Disabilities Act of 1990 ("ADA") with respect to the Property's compliance with the architectural and path-of-travel requirements as in effect at the time the Facility is constructed..

27. Brokers. SPCALA represents that it has had no contacts or dealings regarding this Lease through a broker or agent or any other person who can claim a right to a commission or fee. SPCALA shall defend, indemnify and hold City harmless from all liability arising from any person claiming a commission or fee as a result of SPCALA entering this Lease provided that City promptly notifies SPCALA regarding such claim.

28. **Notice.** Any notice or approval under this Lease shall be in writing and either personally delivered or deposited in the U.S. Postal Service, first-class, postage prepaid and addressed to SPCALA at the address first stated above, Attn: Chief Financial Officer, and to City at 333 West Ocean Boulevard, Long Beach, California 90802 Attn: City Manager. Notice shall be effective on the date of mailing or on the date personal delivery is made, whichever first occurs. Notice of change of address shall be given in the same manner as other notices. A courtesy copy of notices from SPCALA to City shall be given as provided herein to the Director, Department of Health and Human Services, City of Long Beach, 2525 Grand Avenue, Long Beach, California 90815.

29. **Holding Over.** If SPCALA holds over after the expiration of this Lease, with or without the express or implied consent of City, such tenancy shall be from month-to-month only, and neither a renewal of this Lease nor an extension for any further term. Such month-to-month tenancy shall be subject to the terms, covenants, and conditions herein, except that rent shall be five hundred percent (500%) of the rent stated in Section 4. Nothing in this Section shall be construed as a consent by City to any holding over by SPCALA.

30. **Force Majeure.** The term "force majeure" in this Lease shall mean acts of God, strikes, civil disturbances, wars, explosions, or acts beyond the reasonable control of the party claiming inability to perform which, by the exercise of due diligence and foresight, that party could not reasonably control, but financial inability to perform shall not be considered a cause beyond the reasonable control of the party.

31. Surrender of Property. On the expiration or sooner termination of this Lease, SPCALA shall deliver to City possession of the Property in the same or better condition that existed immediately prior to the date of execution hereof, reasonable wear and tear excepted.

32. Hazardous Materials.

A. SPCALA shall not keep or allow to be kept on the Property any goods, merchandise, supplies, personal property, materials, or items of any kind which are in any way explosive or hazardous except those limited items which are necessary for SPCALA to carry on its business provided that SPCALA disposes of same as required by law. SPCALA shall comply with California Health and Safety Code Section 25359.7 or its successor statute regarding notice to City on discovery by SPCALA of the presence or suspected presence of any hazardous substance on the Property. "Hazardous materials or substance" shall mean any hazardous substances as defined in any federal, state or local statute, ordinance, rule or regulation applicable to the property including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Title 42 U.S.C. §§9601-9662), the Resource Conservation and Recovery Act (Title 42 U.S.C. §§6901-6992k), the Carpenter-Presley-Tanner Hazardous Substance Account Act (Health and Safety Code §§ 25300-25395), and the Hazardous Waste Control Law (Health and Safety Code §§ 25100-25250.25). "Hazardous materials" shall also include asbestos, asbestos-containing materials, radon gas and petroleum or petroleum fractions, whether or not defined as a hazardous substance in any such statute, ordinance, rule or regulation.

B. City hereby agrees to indemnify and hold harmless SPCALA, its agents,

employees and directors, from and against any and all costs, damages, claims, clean-up, repair, and liabilities, including reasonable attorney fees, foreseeable or unforeseeable, directly or indirectly arising from any release, treatment, use, generation, storage, or disposal of hazardous materials on, under or from the Property by any person or entity at any time prior to commencement of the Lease. City and SPCALA shall each be responsible for damages, claims, costs and liabilities arising from any release, treatment, use, generation, storage or disposal of hazardous materials on, under or from the Property which occurs after the commencement of the Lease on a comparative basis according to who is responsible for the presence of such hazardous materials on the Property.

33. Termination Right. Notwithstanding any other provisions of this Lease, in the event that with reasonable diligence SPCALA is unable to timely obtain the permits and entitlements from governmental entities required to construct the Facility, it may, at its option, terminate this Lease and all other documents related to it. If SPCALA elects such remedy, this Lease shall terminate, both parties shall be placed in as nearly the same position as possible to that just prior to the execution of this Lease, and they shall thereafter have no further liability or responsibility to each other.

34. Kennel Capacity. The capacity of the kennels operated by the SPCALA on the Premises, meaning the number of animals that can be housed by the SPCALA, shall be mutually agreed to by the parties during the design stage. The capacity of the kennels cannot be increased more than 15% over the capacity figure agreed to in the design stage except in the following circumstances:

- A. by the mutual consent of the parties; or
- B. in the event of a need for temporary housing of animals due to an emergency situation.

CITY shall give notice to the SPCALA of any breach of this provision and SPCALA shall have thirty (30) days after the date of said notice to cure the breach.

35. Miscellaneous.

A. The headings and numbers of this Lease are not a part of it and the groupings of the provisions of it into separate sections, paragraphs, and clauses are for convenience only and shall have no effect on the construction or interpretation of it.

B. Each provision of this Lease to be performed by SPCALA shall be construed as both a covenant and a condition of this Lease.

C. If any term, covenant, or condition of this Lease is found to be invalid, void, ineffective, or unenforceable for any reason, the remaining terms, covenants, and conditions shall remain in full force and effect.

D. Time is of the essence on this Lease.

E. This Lease shall not be modified except in writing signed by duly authorized representatives of the parties.

F. This Lease represents and constitutes the entire understanding between the parties and supersedes all other agreements and communications between the parties, whether oral or written, concerning the subject matter herein.

G. This Lease shall not be recorded.

H. In any action or proceeding relating to this Lease, the prevailing party shall be entitled to its costs, including reasonable attorney's fees.

I. This Lease shall be binding on and inure to the benefit of the parties and their successors, heirs, personal representatives, transferees, and assignees except as provided in Section 15, and all of the parties hereto shall be jointly and severally liable hereunder.

J. Rent not paid when due shall bear interest at the rate of ten percent (10) per annum.

K. This Lease shall be governed by and construed in accordance with the laws of the State of California.

L. This Lease is created as a joint effort between the parties and fully negotiated as to its terms, covenants, and conditions. This Lease shall not be construed against either party as the drafter.

M. The relationship of the parties hereto is that of landlord and tenant, and the parties agree that nothing contained in this Lease shall be deemed or construed as creating a partnership, joint venture, principal-agent, association, or employer-employee relationship between them or between City and any third person or entity.

N. The individuals signing this Lease on behalf of City and SPCALA represent and warrant to each other that they are authorized and legally capable of signing this Lease in their representative capacity.

O. The termination of either this Lease or the Lease-Back shall be deemed and shall immediately cause the termination of the other, without the necessity of notice of

termination. However, if notice of termination is given as to either the Lease or the Lease-Back, then that notice shall also be deemed notice of termination of the other.

IN WITNESS WHEREOF, the parties have caused this document to be executed with all of the formalities required by law as of the date first stated above.

LOS ANGELES SOCIETY FOR THE
PREVENTION OF CRUELTY TO ANIMALS,
a California nonprofit corporation

10/1/98, 1998

By [Signature]
SPCALA President

10/2/98, 1998

By Gladys MacNeil
SPCALA Secretary

CITY OF LONG BEACH, a municipal
corporation

Sept 28, 1998

By [Signature]
Long Beach City Manager
ASSISTANT CITY MANAGER
EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

This Lease is approved as to form this 28th day of Sept, 1998.

ROBERT E. SHANNON, City Attorney

By [Signature]
Deputy

LEGAL DESCRIPTION

**for the
El Dorado Park Area I
Animal Care Center**

That portion of Lot 43 of Tract No. 10548 in the City of Long Beach, County of Los Angeles, State of California, as per map recorded in Book 174, pages 15 through 23 of maps, in the office of the County Recorder of said County described as follows:

Beginning at the intersection of the centerline of Spring Street, 60 feet in width, with the easterly line of the Los Angeles County Flood Control Right-of-Way, said easterly line also being the westerly line of Lot 43, all as shown on said Tract No 10548; thence South 89° 47' 35" East 1417.09 feet along said centerline of Spring Street to a point, said point being the City of Long Beach Monument No. 5150, said monument is referenced by City of Long Beach field book C271 pages 35 and 67, on file in the office of the City Engineer of the City of Long Beach; thence continuing along said centerline of Spring Street South 89° 47' 35" East 508.16 feet; thence at right angles to said centerline South 0° 12' 25" West 64.05 feet to the True Point of Beginning; thence continuing along last said line South 0° 12' 25" West 559.60 feet; thence East 227.63 feet; thence South 0° 29' 09" West 36.77 feet; thence South 89° 55' 26" East 284.30 feet; thence North 0° 12' 25" East 544.12 feet; thence North 84° 07' 34" West 514.27 feet to the True Point of Beginning.

Said described parcel contains 6.51 acres.

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AGREEMENT

25914

THIS AGREEMENT is entered, in duplicate, as of August 1, 1998, for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting held on April 7, 1998, by and between the LOS ANGELES SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, a California non-profit corporation, with a place of business at 5026 West Jefferson Boulevard, Los Angeles, California 90016 ("SPCALA"), and the CITY OF LONG BEACH, a municipal corporation ("City").

RECITALS

WHEREAS, the City periodically supports public service organizations through a variety of programs, grants, and other means when this is a public purpose and benefit, such as the City's support of the Public Corporation for the Arts; and

WHEREAS, SPCALA has indicated a desire to construct a new Facility which will serve as its administrative offices and provide for the care and treatment of animals as is more fully set forth in the Lease. The construction of the new Facility will be referred to herein as the "Project". SPCALA also desires to have a more prominent presence in the City of Long Beach and the City desires to encourage those goals by supporting the SPCALA; and

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WHEREAS, the City's support hereunder is conditioned on execution of a Lease and Lease-Back of certain property on which SPCALA will construct a Facility for, among other things, the shelter, adoption and care of animals and the education of the community relating to the care of such animals; and

WHEREAS, this Agreement, the Lease and the Lease-Back are mutually interdependent;

NOW, THEREFORE, the parties agree as follows:

1. The above recitals are incorporated herein. Capitalized terms used but not defined herein shall have the same meanings as set forth in the Lease-Back and Lease.

2. This Agreement shall take effect and begin on August 1, 1998, and shall end on December 31, 1999, unless sooner terminated as provided herein. Because this Agreement is mutually interdependent with the Lease and Lease-Back between the parties, if either the Lease or the Lease-Back is terminated, then this Agreement shall also terminate automatically and without notice.

3. Upon executing this Agreement, the Lease and Lease-Back, the City shall deliver to Deposit Institution the sum of One Million Five Hundred Thousand Dollars (\$1,500,000.00) which SPCALA agrees to use from time to time during the term of this Agreement for payments of costs and expenses incurred by or on behalf of SPCALA in connection with the development of the Property (the "Cash Deposit"). The Cash Deposit

shall be placed into an interest bearing checking account (the "Cost Account") at a federally insured institution designated by SPCALA. SPCALA shall be entitled to all interest earned on the Cash Deposit, which earned interest shall only be used for the Project. The funds deposited into the Cost Account shall not be commingled with any other funds whatsoever.

4. SPCALA shall also contribute to the Project a sum in cash or cash equivalency of One Million Five Hundred Thousand Dollars (\$1,500,000.00). The parties hereto shall develop a mutually agreeable budget detailing the construction costs for the Facility. In the event the parties fail to reach agreement on a construction budget, after good faith negotiations, then either party (City or SPCALA) may terminate the Agreement, Lease and Lease-Back without penalty and the parties shall have no further duties and responsibilities to the other. The SPCALA shall pay all construction costs in excess of Three Million Dollars (\$3,000,000.00), provided that the debt service on those costs will be paid in accordance with the terms and provisions of the Lease Back.

5. Funds shall be released from the Cost Account as follows:

(a) From time to time and at any time during the term of the Agreement, SPCALA may prepare one or more checks drawn upon the Cost Account, for any entity, including, but not limited to, any public utility or agency, engineering, geological, soils or other consultant, architect, project manager, contractor or other construction related company engaged by SPCALA for purposes related to the Project. The Cash Deposit shall not be used for any expenses other than (i) those payable to parties engaged by SPCALA for purposes related to the development of the Property, including SPCALA's investigation and

analysis of the Property pursuant to this Agreement but not including any salary or administrative costs of SPCALA or (ii) permit, application, filing and other fees and charges payable to governmental or quasi-governmental agencies or entities or public utilities in connection with or in anticipation of the Project. No part of the Cash Deposit shall be used to pay overhead, supervision, administrative or other such costs of SPCALA. Each payment instruction from SPCALA shall be accompanied by a copy of such payee(s)'s invoice or statement for the work performed on behalf of SPCALA and/or related costs and expenses or, in the case of application, permit and other fees payable to any governmental or quasi-governmental agency or entity or public utility, by a brief description of the nature of such fees and costs. SPCALA shall deliver copies of the instruction and related invoice, statement and/or description to City. Checks shall be drawn in accordance with the terms of the payment instructions and City approval shall not be required.

(b) SPCA is only authorized to request up to a total of \$300,000.00 from the Cost Account for design and related preconstruction costs before such time as the Project is submitted to plan check. When the Project is submitted to plan check, the remainder of the funds shall be available for use by the SPCALA in accordance with the procedures set forth in paragraph 5(a) above. In the event the design costs are less than \$300,000.00, all of the remaining funds in the Cost Account shall be available for withdrawal by the SPCALA for the Project.

6. Within fifteen (15) days following the end of each calendar quarter,

during the term of this Agreement, SPCALA shall submit a report of its progress on construction, which shall include copies of change orders and copies of records of in-kind donations designated for the Project.

7. SPCALA shall not use any funds provided by the City under this Agreement for any expense (including administration and overhead) in support of any political activity, political campaign, political candidate, or political purpose.

8. This Agreement is mutually interdependent with the Lease and Lease-Back. If either the Lease or Lease-Back is terminated then this Agreement shall automatically terminate, without notice. In the event of termination of this Agreement, the Lease or Lease-Back, the City's Cash Deposit (less any payments already made from the Cost Account) shall be immediately returned to the City.

9. The City shall not have any control over the conduct of the staff of SPCALA nor any of SPCALA's employees, and the SPCALA shall not have any control over the conduct of the staff and employees of the City. SPCALA warrants that it will not imply or represent that SPCALA or any of SPCALA's volunteers, subscribers, donors, members, officers, or employees are agents, volunteers, or employees of the City. The City warrants that it will not imply or represent that the City, its officials or employees are agents or employees of SPCALA.

10. This Agreement contemplates that the construction of a new Facility presents special opportunities to both parties herein and is a special inducement to them for

entering into this Agreement. As a result, neither party shall assign its rights or delegate its duties hereunder, or any interest herein, or any portion hereof. Any attempted assignment or delegation shall be void, and any assignee or delegate shall acquire no right or interest by reason of such attempted assignment or delegation. Assignment of this Agreement by either party or by a trustee in bankruptcy shall be a material, non-curable breach of this Agreement entitling the non-breaching party to terminate this Agreement immediately. However, the SPCALA may assign this Agreement in event it is acquired by or merges into a similar non-profit corporation.

11. SPCALA shall defend, indemnify and hold harmless the City, its officials, employees, and agents (collectively in this Section) from and against any cause of action, claim, demand, damage, loss, liability, cost, or expense, including reasonable attorneys fees, (collectively in this Section "claim") arising from any alleged negligent act or omission or willful misconduct by SPCALA, its officers, employees or agents which are connected in any way with its obligations and performance under this Agreement. SPCALA shall give notice to the City of any claim within ten (10) calendar days after its knowledge of same.

12. Any notice given under this Agreement shall be in writing and personally delivered or deposited in the U.S. Postal Service, first class, postage prepaid to the City at 333 West Ocean Boulevard, Long Beach, California 90802 Attn: City Manager and to SPCALA at the address first shown above. Change of address shall be given in the

same manner as stated here for other notices. Notice shall be deemed given on the date deposited in the mail or on the date personal delivery is made, whichever first occurs.

13. If there is a claim relating to the payment of wages arising from the construction described herein, then the parties shall share all costs, expenses, penalties, payments of wages, interest, and other charges related to the claim, including attorneys' fees and court or administrative costs and expenses as follows: 5% to be paid by SPCALA, and 95% to be paid by the City.

14. The acceptance of performance or the payment of money shall not operate as a waiver of any provision of this Agreement, or of any rights herein. The waiver of any breach of this Agreement shall be in writing and shall not constitute a waiver of any other or subsequent breach of this Agreement.

15. This Agreement shall not be modified except in a formal written amendment. This Agreement shall be governed by and construed pursuant to the laws of the State of California. This Agreement constitutes the entire understanding between the parties and supersedes all other agreements, oral or written, with respect to the subject matter herein.

16. Subject to applicable laws, rules, and regulations, the parties shall not discriminate in the performance of this Agreement on the basis of race, color, religion, national origin, sex, sexual orientation, AIDS, AIDS related condition, age, disability, handicap, or Vietnam Era veteran status.

IN WITNESS WHEREOF, the parties have caused this document to be executed with
all of the formalities required by law as of the date first stated above.

LOS ANGELES SOCIETY FOR THE
PREVENTION OF CRUELTY TO ANIMALS,
a California non-profit corporation

10/1/98, 1998

By [Signature]
President

10/2/98, 1998

By Gladys MacNair
Secretary

CITY OF LONG BEACH, a municipal
corporation

Sept 28, 1998

By [Signature] ASSISTANT CITY MANAGER
EXECUTED PURSUANT City Manager
TO SECTION 301 OF
THE CITY CHARTER.

This Agreement is approved as to form 9/28, 1998.

ROBERT E. SHANNON, City Attorney

By [Signature]
Deputy

Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

FIRST AMENDMENT TO AGREEMENT NO. 25914

25914

THIS FIRST AMENDMENT TO AGREEMENT NO. 25914 is made and entered, in duplicate, as of February 3, 2000 for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting held on February 1, 2000, by and between the LOS ANGELES SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, a California non-profit corporation ("SPCALA"), and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, the parties desire to extend the term of the Agreement;

NOW, THEREFORE, in consideration of the mutual terms and conditions in Agreement No. 25914 and herein, the parties agree as follows:

1. Section 2 of Agreement No. 25914 is hereby amended in its entirety to read as follows:

"2. This Agreement shall take effect and begin on August 1, 1998, and shall end on December 31, 2000, unless sooner terminated as provided herein. Because this Agreement is mutually interdependent with the Lease and Lease-Back between the parties, if either the Lease or the Lease-Back is terminated, then this Agreement shall also terminate automatically and without notice."

2. Except as expressly amended herein, all of the terms and conditions in Agreement No. 25914 are ratified and confirmed and shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this document to be dully

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Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

1 executed with all of the formalities required by law as of the date first stated above.

2 LOS ANGELES SOCIETY FOR THE PREVENTION
3 OF CRUELTY TO ANIMALS, a California non-profit
4 corporation

5 3-17-, 2000

By [Signature] President

6 3-23, 2000

By Gladys Runzen MacNair Secretary

7 "SPCALA"

8 CITY OF LONG BEACH, a municipal corporation

9 April 18, 2000

By [Signature]

ASSISTANT City Manager
EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

11 "City"

12 This First Amendment to Agreement No. 25914 is approved as to form on

13 4/5, 2000.

14 ROBERT E. SHANNON, City Attorney

15 By [Signature] Deputy

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

LOS ANGELES

} ss.

On

3-17-2000

Date

before me, JUDITH G. SIMS, NOTARY PUBLIC

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared

MADELINE BERNSTEIN

Name(s) of Signer(s)

☒ personally known to me

☒ proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Judith G. Sims
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: FIRST AMENDMENT TO AGREEMENT # 25914

Document Date: _____

Number of Pages: 2

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: MADELINE BERNSTEIN

☐ Individual

☒ Corporate Officer — Title(s): PRESIDENT

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: spca LA

RIGHT THUMBPRINT
OF SIGNER
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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of CALIFORNIA

County of LOS ANGELES

On MARCH 23, 2000 before me, BERNARD PLOST

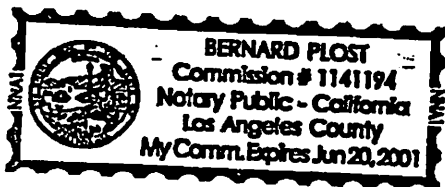
Date

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared GLADYS PAUNZEN MACNAIR

Name(s) of Signer(s)

☐ personally known to me – OR – ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Bernard Plost

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: First Amendment to Agreement # 25914

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer
Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

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OF SIGNER
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Signer's Name: _____

- ☐ Individual
☐ Corporate Officer
Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

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OF SIGNER
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LEASE-BACK

25916

THIS LEASE-BACK is made and entered, in duplicate, as of the 1st day of August, 1998, for reference purposes only, pursuant to a minute order of the City Council of the City of Long Beach at its meeting held on April 7, 1998, by and between the CITY OF LONG BEACH, a municipal corporation ("City"), and the LOS ANGELES SOCIETY FOR PREVENTION OF CRUELTY TO ANIMALS, a California non-profit corporation ("SPCALA"), whose address is 5026 West Jefferson Boulevard, Los Angeles, California 90016.

RECITALS

WHEREAS, City and SPCALA are simultaneously with execution of this Lease-Back entering into a Lease for approximately 6.5 acres located at 7700 East Spring Street, in the City of Long Beach (the "Lease"); and

WHEREAS, as a condition of the Lease, SPCALA will construct improvements to the Property; and

WHEREAS, as a further condition of the Lease, SPCALA will execute this Lease-Back for a portion of the Facility to the City; and

WHEREAS, the parties intend and agree that this Lease-Back and the Lease shall be mutually interdependent;

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NOW, THEREFORE, in consideration of the mutual terms and conditions contained herein, the parties agree as follows:

1. Recitals. The above recitals are incorporated herein by this reference.

Capitalized terms used but not defined herein shall have the meanings set forth in the Lease.

2. Property. SPCALA hereby leases back to City and City hereby accepts and leases from SPCALA the portion of the Facility shown in red on Exhibit "A," attached hereto and incorporated herein by this reference, consisting of approximately _____ square feet, and commonly known as 7700 East Spring Street, Long Beach, Los Angeles County, California 90815, the "Lease-Back Premises", together with the right, in common between City, its employees, agents, and invitees and SPCALA, its employees, agents, and invitees to use the Common Areas (as defined in Section 6 hereof) delineated on Exhibit "A" in blue, subject to the Rules and Regulations attached as Exhibit "B."

3. Term. The term of this Lease-Back shall commence on the earlier of the following: the first day of the month following receipt of a Certificate of Occupancy by the SPCALA, or the first day of occupancy by City, and shall terminate on May 31, 2053, unless terminated sooner as provided for herein. The anniversary date of this Lease-Back shall be August 1, regardless of the commencement date.

4. Rent. City shall pay to SPCALA as annual Lease-Back rent the sum of Sixty Dollars (\$60.00), in advance, without deduction, set-off, notice, or demand on the anniversary date of each Lease year, and other good and valuable consideration including City's execution of the Lease. However, the first payment of annual Lease-Back rent shall

be due and payable on the commencement of this Lease-Back, rather than on the anniversary date.

5. Use. The Lease-Back Premises shall be used solely by City's Department of Health and Human Services and solely in connection with its animal control program. City shall not use the Lease-Back Premises or conduct its business thereon in any manner that will create a nuisance or constitute waste. City shall not make or permit any noise or odors that constitute a nuisance within the meaning of California Civil Code Section 3479 or California Penal Code Section 370.

6. Common Areas. The term "Common Area" and "Common Areas" shall mean all areas and facilities that are traditionally for the general nonexclusive use of lessees, their employees, suppliers, shippers, customers, invitees, and others, plus exterior doors and entrances, lobbies, public restrooms, parking areas, loading and unloading areas, service ways, trash areas, roadways, sidewalks, walkways, parkways, stairs, ramps, driveways, bumpers, landscaped areas, veterinary theater, classrooms, conference rooms, and rooms for employee breaks, exterior walls, the roof, the foundation fences, gates, and exterior windows and plate glass, and overhead lighting facilities.

7. Expenses.

A. City shall pay to SPCALA as additional rent during the term hereof fifty percent (50%) of all Operating Expenses, as herein defined. "Operating Expenses" shall mean all costs incurred by SPCALA under the Lease for the operation, repair, replacement

and maintenance of the Lease-Back Premises, in a neat, clean, safe and good condition including but not limited to the following:

(i) The Common Areas including their surfaces, coverings, decorative items, carpets, and drapes and other window coverings;

(ii) All heating, air conditioning, plumbing, and electrical systems, life safety and security equipment and systems, (excluding those which are controlled exclusively by SPCALA or City) telecommunications systems and facilities (excluding those which are controlled exclusively by SPCALA or City), fire detection systems (including sprinkler system maintenance and repair), and irrigation systems;

(iii) Trash disposal, janitorial services, and security services;

(iv) The cost of the following utilities: gas and electricity;

(v) The replacement or addition of improvements mandated by any governmental agency;

(vi) The replacement of equipment or improvements that have a useful life for depreciation purposes according to Federal income tax guidelines of five (5) years or less;

(vii) The costs associated with the use of a management company to manage the Lease-Back Premises;

(viii) Debt service on funds in excess of Three Million Dollars (\$3,000,000.00) borrowed by SPCALA to pay the cost of original construction of the Facility as defined in the Lease.

(ix) City shall pay its share of Operating Expenses within ten (10) days after receipt from SPCALA of a statement of actual expenses.

B. City shall pay during the term hereof all water and sewer services for the Property and the Facility. City shall also pay the cost of the premium for all-risk property insurance for the Facility both during construction of the Facility and during the term of the Lease-Back.

8. Maintenance & Repair. City shall, at its own expense and to the satisfaction of the SPCALA, keep, maintain, repair and replace all or any portion of the interior of the Lease-Back Premises and all improvements thereon in good condition (excluding those portions which are Common Areas), in a neat, safe and sanitary condition, and in compliance with applicable laws. City shall keep the Lease-Back Premises free from trash, garbage and litter. In all other respects, maintenance shall be governed by the Lease.

9. Nondiscrimination. Subject to applicable laws, rules, and regulations, City shall not discriminate against anyone in its use of the Lease-Back Premises on the basis of age, sex, sexual orientation, AIDS, AIDS related condition, marital status, race, religion, creed, ancestry, national origin, disability, handicap, or Vietnam veteran status.

10. Notice. Any notice required by this Lease-Back shall be in writing and personally delivered or deposited in the U.S. Postal Service, first class, postage prepaid to City at 333 West Ocean Boulevard, Long Beach, California 90802 Attn: City Manager and to SPCALA at the address first stated above, to the attention of the Chief Financial Officer. Notice shall be deemed effective on the day following the date of mailing or on the date

personal delivery is made, whichever first occurs. Change of address shall be given as provided herein for notices.

11. Kennel Capacity. The capacity of the kennels operated by the City on the Lease-Back Premises, meaning the number of animals that can be housed in the Lease-Back Premises, shall be mutually agreed to by the parties during the design stage. The capacity of the kennels cannot be increased more than 15% over the capacity figure agreed to in the design stage except in the following circumstances:

- (i) by the mutual consent of the parties; or
- (ii) in the event of a need for temporary housing of animals due to an emergency situation.

SPCALA shall give notice to the City of any breach of this provision and City shall have thirty (30) days after the date of said notice to cure the breach.

12. Indemnification. City shall defend, indemnify and hold SPCALA, its officers and employees harmless from all claims, demands, damages, causes of action, losses, liability, costs, or expenses, including reasonable attorney's fees, of any kind or nature whatsoever which SPCALA, its officers and employees may incur for injury to or death of persons or damage to or loss of property occurring in or on the Property or Facility arising from the condition of the Facility which City is required to maintain under Section 8 hereof, and the acts or omissions of City, its officers or employees relating to the occupancy, use, or misuse of the Facility by City, City's employees, licensees, or visitors.

13. Insurance.

A. During the term of the Lease-back, City shall procure and maintain in full force and effect and at City's sole cost and expense the following policies of insurance, each policy of insurance required to be maintained by City shall be issued by an insurance company authorized to do business in the State of California, with a rating classification of at least a Class A: VIII by A.M. Best and Company. Such policies shall name SPCALA as an additional or named insured:

(i) A policy of "all risk" property, fire and extended coverage insurance, including without limitation, coverage of vandalism and malicious mischief, in an amount equal to one hundred percent (100%) of the full insurance replacement value of the Facility, which policy shall identify SPCALA as a co-insured with City;

(ii) A policy of or self insurance for comprehensive general liability insurance, insuring City's activities and those of its employees, agents, contractors, and invitees with respect to the Property or Facility against loss, damage, or liability for injury, or death of any person, or loss or damage to property occurring on the Property or Facility, as a result of occupancy or use of the Property or Facility with a limit of not less than Three Million Dollars (\$3,000,000.00) for each occurrence and Five Million Dollars (\$5,000,000.00) general aggregate for injury to any number of persons and/or property damage in any one occurrence.

(iii) Prior to the commencement of the Lease-Back, City shall furnish to SPCALA a certificate of insurance issued by the insurance carrier of each policy of

insurance carried by City pursuant hereto. Such certificate shall reflect that SPCALA is an additional or named insured and that such insurance policies shall not be cancelable without a minimum of thirty (30) days prior written notice to SPCALA.

(iv) The procuring of said insurance shall not be construed as a limitation on City's liability or as full performance on City's part of the indemnification and hold harmless provisions of this Lease Back; and City understands and agrees that, notwithstanding any insurance, City's obligation to defend, indemnify and hold SPCALA, its officers and employees harmless hereunder is for the full amount of any damage, cause of action, loss, expense, cost, or liability caused by the condition of the Facility or in any manner connected with or attributed to the acts or omissions of City, City's, agents, employees, licensees, invitees, or visitors, or the operations conducted by City, or City's use, misuse or neglect of the Facility.

(v) SPCALA makes no representation or warranty that the limits or forms of coverage of insurance specified herein are adequate to cover City's property, liability, or obligations under this Lease-Back.

B. It is understood and agreed that City may satisfy the insurance obligations and requirements set forth herein through an approved self-insurance plan.

14. Assignment. Neither party shall assign or transfer this Lease-Back or any interest in this Lease-Back, and City shall not sublease the Lease-Back Premises or any part thereof. Assignment of the Lease-Back by either party or by a trustee in bankruptcy shall be a material, non-curable breach of this Lease-Back.

15. Waiver. The failure or delay of SPCALA to insist on strict enforcement of any term, covenant, or condition herein shall not be deemed a waiver of any right or remedy that SPCALA may have and shall not be deemed a waiver of any subsequent or other breach of any term, covenant, or condition herein. The receipt and acceptance by SPCALA of delinquent rent shall not constitute a waiver of any other default but shall only constitute a waiver of timely payment for the particular rent payment involved. Any waiver by SPCALA of any default or breach shall be in writing. SPCALA's consent to or approval of any act by City requiring SPCALA's consent or approval shall not be deemed to waive SPCALA's consent or approval of any subsequent act of City.

16. This Lease Back shall be binding on and shall inure to the benefit of the parties and their successors, transferees, assignees, heirs and personal representatives and all of the parties shall be jointly and severally liable hereunder.

17. Attorney's Fees. In any action or proceeding relating to this Lease-Back, the prevailing party shall be entitled to its costs, including reasonable attorney's fees.

18. Waiver by City. SPCALA shall not be liable for and City hereby waives all claims against SPCALA, its officers and employees for loss, theft, or damage to equipment, furniture, trade fixtures, records, plants, and other personal property on or about the Lease-Back Premises, for injury to or death of persons on the Lease-Back Premises from any cause except to the extent caused by the gross negligence or willful misconduct of SPCALA, its officers, employees or agents.

19. Compliance with Laws. City, at its sole cost, shall comply with all laws, ordinances, rules, and regulations of and obtain such permits, licenses, and certificates required by all federal, state and local governmental authorities having jurisdiction over the Lease-Back Premises and business thereon.

20. Choice of Law; Amendments. This Lease-Back shall be construed and interpreted in accordance with the laws of the State of California. This Lease-Back contains the entire understanding of the parties and supersedes all other agreements and communications between the parties, oral or written, concerning the Lease-Back Premises. This Lease-Back shall not be construed against either party as the drafter. This Lease-Back may not be changed or amended except by an instrument in writing signed by SPCALA and City. This Lease-Back shall not be recorded.

21. Broker. The parties covenant and represent that they have had no contacts or dealings regarding this Lease-Back through a broker or agent or any other person who can claim a right to a commission or fee.

22. Termination of Lease. This Lease-Back is subject and subordinate to the terms and conditions of the Lease. The parties mutually acknowledge and agree that this Lease-Back and the Lease are mutually dependent and the termination of either this Lease-Back or the Lease shall be deemed and shall immediately cause the, termination of the other, without the necessity of notice of termination. However, if notice of termination is given as to either the Lease or the Lease-Back, then that notice shall also be deemed notice of termination of the other.

23. Signs. City and SPCALA shall mutually agree to place, affix, maintain, and permit any sign, advertisement, name, insignia logo, descriptive material, or similar item (collectively, "sign" or "signs") on the Lease-Back Premises. Signs identifying the City shall be maintained by City, at its cost, in good condition.

City and SPCALA shall erect appropriate signs to identify the Lease-Back Premises as separate from the premises of the SPCALA. These signs may take the form of a map or other graphics of the entire facility color-coded to identify the Lease-Back Premises from the premises of the SPCALA as well as descriptive signs with arrows, logos, or other identifying marks.

24. Record Retention. SPCALA shall keep or cause to be kept during the term of this Lease-Back and for one (1) year thereafter books and records relating to Operating Expenses.

City shall have the right at any reasonable time during the term and for one (1) year after expiration or sooner termination of this Lease-Back to examine and audit the books and records of SPCALA relating to Operating Expenses, at the City's cost, except as stated below.

SPCALA shall cooperate with the City in such examination or audit, which shall take place during usual business hours.

If the audit reveals an overstatement of Operating Expenses which has resulted in an overpayment of City's share under this Lease-Back, then SPCALA shall immediately refund the City's overpayment upon demand for same from City. If the City has overpaid its

share of operating Expenses by five percent (5%) or more, then SPCALA shall pay the cost of the audit.

25. Default. The occurrence of any of the following acts shall constitute a default by City:

A. Failure to pay rent when due if the failure continues after three (3) days' written notice from SPCALA;

B. Abandonment of the Lease-Back Premises, providing that failure to occupy or operate the Lease-Back Premises for ten (10) consecutive business days shall be deemed an abandonment except for causes of force majeure;

C. Any attempted assignment, transfer or sublease;

D. Failure to maintain or pay for all necessary permits and business licenses required by the City of Long Beach in its municipal or regulatory capacity;

E. The making by City of any general arrangement or general assignment for the benefit of creditors, or the appointment of a trustee or receiver to take possession of substantially all of City's assets located at the Lease-Back Premises or of City's interest in this Lease-Back, or the attachment, execution or other judicial seizure of substantially all of City's assets located at the Lease-Back Premises or of City's interest in this Lease-Back, or where City becomes a "debtor" as defined in any bankruptcy laws. If any provision of this subpart (E) is contrary to law, such provision shall have no force or effect;

F. Failure to perform any term, covenant or condition of this Lease-Back, other than those set forth in sub-sections (A), (B) and (C) of this section shall not constitute

a default unless such default is not cured within thirty (30) days after receipt by City of notice from SPCALA specifying such default. If the default cannot be reasonably cured within such thirty-day period, City shall still not be in default if City begins to cure within such thirty-day period and diligently proceeds to cure to completion;

G. The breach by City of any of the covenants, conditions or provisions of sub-sections (B) and (E) of this section all of which are hereby deemed to be material, non-curable defaults without the necessity of notice thereof by SPCALA to City;

H. The parties mutually agree that and this Lease-Back is and shall be mutually dependent on the Lease, and a default by City under the Lease shall be a material non-curable default under this Lease-Back and termination of the Lease shall also be a material non-curable default under this Lease-Back, all of which shall entitle SPCALA to terminate this Lease-Back immediately without the necessity of notice thereof by SPCALA to City. SPCALA may, in its sole discretion, elect to waive a non-curable default or breach of this Lease-Back by City thereby avoiding termination of the Lease-Back and Lease.

26. Hazardous Materials. City shall not keep or allow to be kept on the Lease-Back Premises any goods, merchandise, supplies, personal property, materials, or items of any kind which are in any way explosive or hazardous except those limited items which are necessary for City to carry on its business provided that City disposes of same as required by law.

27. **Parking Spaces.** City shall be entitled to the number of reserved parking spaces as set forth in Exhibit "C" for the use of its staff, at no charge.

28. **Quiet Possession.** If City pays the rent and performs all of the covenants and conditions of this Lease-Back, City shall have quiet possession of the Lease-Back Premises for the term hereof subject to the covenants and conditions of this Lease.

29. **Force Majeure.** The term "force majeure" in this Lease Back shall mean acts of God, strikes, civil disturbances, wars, explosions, or acts beyond the reasonable control of the party claiming inability to perform which, by the exercise of due diligence and foresight, that party could not reasonably control, but financial inability to perform shall not be considered a cause beyond the reasonable control of the party.

30. **Miscellaneous.**

A. The headings and numbers of this Lease-Back are not a part of it and the groupings of the provisions of it into separate sections, paragraphs, and clauses are for convenience only and shall have no effect on the construction or interpretation of it.

B. Each provision of this Lease-Back to be performed by City shall be construed as both a covenant and a condition of this Lease-Back.

C. If any term, covenant, or condition of this Lease-Back is found to be invalid, void, ineffective, or unenforceable for any reason, the remaining terms, covenants, and conditions shall remain in full force and effect.

D. Time is of the essence on this Lease-Back.

E. This Lease-Back shall not be recorded.

F. Rent not paid when due shall bear interest at the rate of ten percent (10)% per annum.

G. This Lease-Back is created as a joint effort between the parties and fully negotiated as to its terms, covenants, and conditions. This Lease-Back shall not be construed against either party as the drafter.

H. The relationship of the parties hereto is that of landlord and tenant, and the parties agree that nothing contained in this Lease-Back shall be deemed or construed as creating a partnership, joint venture, principal-agent, association, or employer-employee relationship between them or between City and any third person or entity.

I. The individuals signing this Lease-Back on behalf of City and SPCALA represent and warrant to each other that they are authorized and legally capable of signing this Lease-Back in their representative capacity.

31. Exhibit "C". Subsequent to execution of this Lease-Back, the parties shall execute a document captioned "Commencement Date and Parking", in the form of Exhibit "C" attached hereto and incorporated herein by reference, which states the commencement date and the number of parking spaces reserved to the City hereunder.

IN WITNESS WHEREOF, the parties have caused this document to be executed with
all of the formalities required by law as of the date first stated above.

LOS ANGELES SOCIETY FOR THE
PREVENTION OF CRUELTY TO ANIMALS,
a California nonprofit corporation

10/1/98, 1998

By [Signature]
President

10/2/98, 1998

By [Signature]
Secretary

CITY OF LONG BEACH, a municipal
corporation

Sept 28, 1998

By [Signature] ~~ASSISTANT CITY MANAGER~~
City Manager

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

This Lease-Back is approved as to form this 28th day of Sept., 1998.

ROBERT E. SHANNON, City Attorney

By [Signature]
Deputy

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4884

FIRST AMENDMENT TO LEASE-BACK NO. 25916

25916

THIS FIRST AMENDMENT TO LEASE-BACK NO. 25916 ("First Amendment") is made and entered, in duplicate, as of July 28, 2009, for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting held on July 14, 2009, by and between the CITY OF LONG BEACH, a municipal corporation ("City"), and the LOS ANGELES SOCIETY FOR PREVENTION OF CRUELTY TO ANIMALS, a California nonprofit corporation ("SPCALA"), whose address is 5026 West Jefferson Boulevard, Los Angeles, California 90016.

RECITALS

This First Amendment is made with reference to the following facts and objectives:

WHEREAS, City and SPCALA entered into Lease-Back No. 25916 ("Lease-Back"), pursuant to which SPCALA leased to City certain portions of the Facility shown in red on Exhibit "A", consisting of Lease-Back Premises, together with the right to use the Common Areas shown in blue on Exhibit "A"; and

WHEREAS, the full plan for the Facility was approved by the parties in August 1998; and

WHEREAS, the parties are not obligated to construct the Facility in whole as shown on the full plan, and the portions of the Facility that have been completed are shown on Exhibit "C" attached to this First Amendment; and

WHEREAS, Section 7.(A), and more particularly Section 7.(A)(viii), of the Lease-Back provides that the City shall pay to SPCALA fifty percent (50%) of all Operating Expenses, which includes debt service on funds in excess of Three Million Dollars (\$3,000,000.00) borrowed by SPCALA to pay for the cost of original construction of the Facility as defined in the Lease; and

WHEREAS, original construction of the Facility has been deemed fully completed as shown on Exhibit "C"; and

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CITY ATT
LONG BEACH

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LONG BEACH, CALIF.
09 OCT 21 AM 9:53

END

1 WHEREAS, SPCALA borrowed additional funds to pay for the cost of
2 original construction of the Facility, and such loan was later replaced by a tax-exempt
3 bond and letter of credit in the total amount of Five Million Five Hundred Ninety Thousand
4 Six Hundred Sixty-Six Dollars and Ninety-Eight Cents (\$5,590,666.98); and

5 WHEREAS, the Lease-Back provides that the Lease-Back may be changed
6 or amended by an instrument in writing signed by the City and SPCALA; and

7 WHEREAS, the parties desire to amend the Lease-Back to clarify the rights
8 and obligations of both parties under the Lease-Back; and

9 WHEREAS, capitalized terms not defined herein shall have the meanings
10 ascribed to them in the Lease-Back;

11 NOW, THEREFORE, in consideration of the mutual terms and conditions
12 contained herein, the parties agree as follows:

13 1. Recitals. The above recitals are true and correct and are
14 incorporated by this reference.

15 2. Exhibit "A". Exhibit "A" to the Lease-Back which shows and
16 delineates the Lease-Back Premises and Common Areas, is hereby deleted, superseded
17 and replaced in its entirety by Exhibit "A" attached hereto.

18 3. Exhibit "C". Exhibit "C" which depicts the portions of the Facility that
19 have been completed, is hereby attached hereto and incorporated herein by this
20 reference.

21 4. Debt Service. Section 7.A(viii) of the Lease-Back is hereby
22 amended in its entirety to read as follows:

23 "(viii) Debt service on funds in excess of Three Million Dollars
24 (\$3,000,000.00) borrowed by SPCALA to pay for the cost of original construction
25 of the Facility as defined in the Lease. Debt service on such borrowed funds shall
26 be limited to payments of interest, fees charged for bond administration and fees
27 charged to maintain letters of credit issued to finance original construction. City
28 shall not be obligated to pay any part of the principal of the bond or balance of the

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4684

1 letters of credit."

2 5. Operating Expenses. Section 7.A(ix) of the Lease-Back is hereby
3 amended in its entirety to read as follows:

4 "(ix) City shall pay its share of Operating Expenses within ten (10)
5 days after receipt from SPCALA of monthly certified invoices for actual expenses
6 together with reasonably detailed supporting documentation."

7 6. Ratification. Except as expressly amended in this First Amendment,
8 the terms and conditions contained in Lease-Back No. 25916 are ratified and confirmed
9 and shall remain in full force and effect.

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OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4684


1 IN WITNESS WHEREOF, the parties have caused this document to be duly
2 executed with all formalities required by law as of the date first stated above.

3 THE LOS ANGELES SOCIETY FOR
4 PREVENTION OF CRUELTY TO
5 ANIMALS, a California nonprofit
6 corporation

7 By  President
8 Margaret Bernstein Type or Print Name
9 By  Secretary
10 Mariann N. Horre Type or Print Name

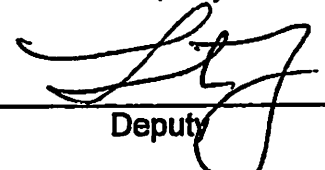
11 "SPCALA"

12 CITY OF LONG BEACH, a municipal
13 corporation

14 By  Assistant City Manager
15 City Manager
16 "City" EXECUTED PURSUANT
17 TO SECTION 301 OF
18 THE CITY CHARTER

19 This First Amendment to Lease-Back No. 25916 is approved as to form on

20 ROBERT E. SHANNON, City Attorney

21 By  Deputy
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P.D. Pitchford Companion Animal Village

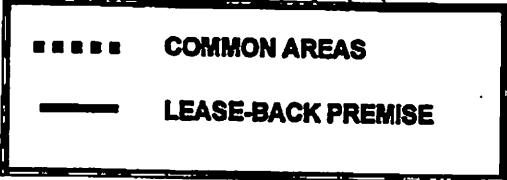
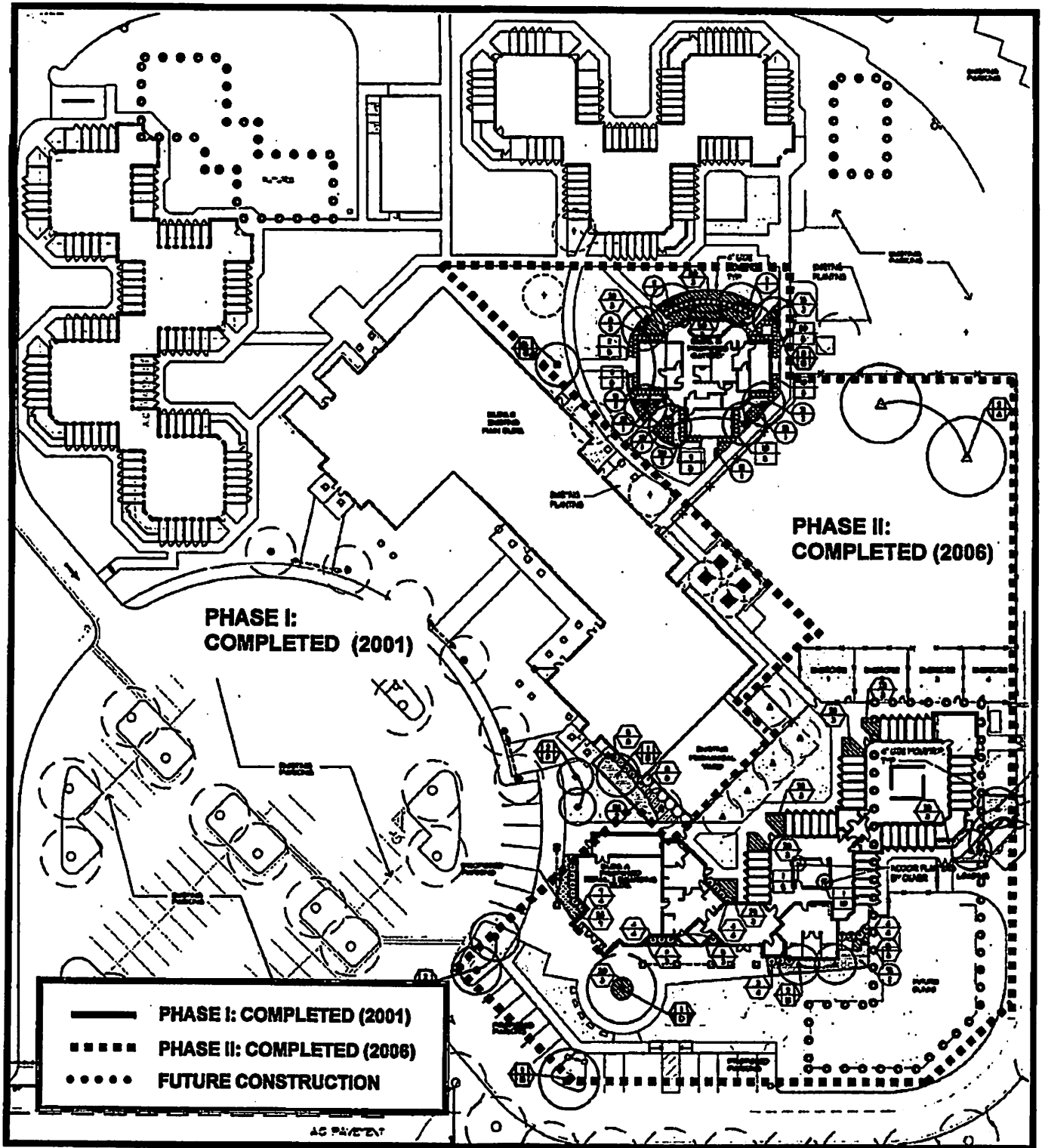


EXHIBIT C: COMPLETED CONSTRUCTION ON DATE OF AMENDMENT
P.D. Pitchford Companion Animal Village



Drawings completed 2007